IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 728 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANAGER SHREE VIRAMGAM KHODA DHOR
Versus
RABARI SAMABHAI PANCHANBHAI & ANR

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Appearance :
MR NS SHETH for Applicant
RULE SERVED for Respondent No.1
MR PD BHATE APP for Respondent No.2
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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 08/03/2006

ORAL JUDGMENT

1.Heard learned advocate Mr.N.S.Seth for the applicant and learned APP Mr.P.D.Bhate for the respondent No.2 – State of Gujarat. The respondent No.1 is served, but nobody has appeared on behalf of the respondent No.1.

2.The complaint came to be filed by the complainant on 25.04.2003 for the offence under Section 11(D) of the Animals of Cruelty Act, registered as C.R.No.II-17/2003 before Patadi Police Station, District: Surendranagar. Upon the said complaint, the police authority had seized 209 cattle and custody of the same had been handed over to the present applicant.

3.The respondent No.2 original applicant filed an application before the Judicial Magistrate, First Class, Dashada at Patadi on 28.04.2003 under Section 451 of the Criminal Procedure Code for custody of the animals seized. The Judicial Magistrate, First Class, Dashada at Patadi was pleased to allow the said

application on 01.05.2003, on certain terms and conditions.

4. Against the order dated 01.05.2003 passed by the learned Judicial Magistrate, First Class, Dashada at Patadi, the present applicant has preferred Criminal Revision Application No.13/2003, on 22.05.2003 before the Sessions Court at Dhrangadhra under Section 397 of the Criminal Procedure Code. The learned Additional Sessions Judge, at Dhrangadhra vide order dated 10.07.2003 dismissed the Revision Application and confirmed the order passed by the learned Judicial Magistrate, First Class, Dhrangadhra on 01.05.2003 and hence the present petition.

5. During the pendency of this petition, this Court [Coram: D.P.Buch,J.] by order dated 25th July, 2003 issued notice and suspended the order passed by the learned Sessions Judge and till today, 209 cattle are kept in the custody of the present applicant. It is pertinent to note that the matter is of 2003 and till now,

the cattle are in the possession of the Panjarapole.

6.It is submitted by the learned advocate for the applicant that the Criminal Case is pending before the learned Judicial Magistrate, First Class, Paradi.

7.Taking into consideration lapse of time and as respondent No.1 is served, but nobody appeared on his behalf and he himself has not appeared, without going into the merits of the case, this Court is of the view that the custody of the cattle is required to be given to the present applicant.

8.In view of the above, the petition is allowed. The order dated 1st May, 2003 passed by the learned Judicial Magistrate, First Class, Paradi and the order dated 10th July, 2003 passed by the learned Additional Sessions Judge, Dhrangadhra in Criminal Revision Application No.13/2003 are hereby quashed and set aside. The custody of the cattle, with the

applicant, is continued till the final disposal of the Criminal Case in connection with the C.R.No.II-17/2003 registered before Paradi Police Station. Learned Judicial Magistrate First Class, Paradi is hereby directed to dispose of the Criminal Case in connection with the C.R.No.II-17/2003 registered before the Paradi Police Station as early as possible preferably within a period of three month from the date of the receipt of the writ of this Court. Rule is made absolute.

[M. D. SHAH, J.]

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